SUMMARY OF ARGUMENT

The established and unquestionable modern policy of giving the Federal Employers' Liability Act the broadest and most liberal application is directed to the entire railroad industry engaged in interstate commerce. The members of the railroad Brotherhoods employed by P.F.E., enabling respondent to effectuate the transportation of perishable commodities in interstate commerce, do the same basic jobs as their fellows employed by Southern Pacific or Union Pacific, or any other operating railroad.

The F.E.L.A. is more efficient than any presently existing alternative. Congress has provided for jury trials for railroad workmen and has created the maximum protection which legislative refinement of common law remedies can provide. The applicable modern authority, the efficacy of the F.E.L.A., the need for a consistent and uniform system of Federal railroad legislation—all support the conclusion that respondent Pacific Fruit Express is a "common carrier by railroad" under the F.E.L.A. The decision of the Court of Appeals disrupts the even application of the Congressional scheme for regulating the railroad industry for no valid reason.

ARGUMENT

Of overriding importance is the fact that the employees of Pacific Fruit Express are engaged in the same work and exposed to the same risks of railroad-

In the Supreme Court

OF THE

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OCTOBER TERM, 1967

No. 465

ELISHA EDWARDS,
Petitioner,

vs.

PACIFIC FRUIT EXPRESS COMPANY,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

MOTION FOR LEAVE TO FILE BRIEF, AMICI CURIAE and BRIEF OF THE BROTHERHOOD OF RAILWAY CARMEN OF AMERICA, THE BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, and THE SWITCHMEN'S UNION OF NORTH AMERICA, AMICI CURIAE

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PERNAU-WALSH PRINTING CO., SAN FRANCISCO

ing as are the employees of all operating railroads in the United States. To reach the conclusion of the Court of Appeals in *Edwards v. Pacific Fruit Express,* it is necessary to hypothesize on the part of Congress an intention to limit the coverage of the F.E.L.A. only to certain classes of railroad workers. Yet this inference is unjustified and when resorted to by lower courts in the past has been explicitly criticized by this Court.

> To read into this all-inclusive wording a restriction as to the kinds of employees covered . . . would be contradictory to the wording, the remedial and humanitarian purpose and the constant and established course of liberal construction of the Act followed by this Court.[2]

This Court long ago determined that the Act was not to be narrowed by a "refined reasoning" but was most definitely to "be construed liberally to fulfill the purposes for which it was enacted . . ."[3] Congress re-enacted the F.E.L.A. in 1908 in the belief that a national law operating uniformly would better serve the needs of railroad employees than sporadic state action and thereby exercised its broad power "to secure the safety of interstate transportation and of those who are employed therein, no matter what the source of the dangers which threaten it."[4]

The broad policy of protecting employees in the railroad industry should specifically be applied to the

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[2] *Urie v. Thompson,* 337 U.S. 163, 181-182 (1949).
[3] *Jamison v. Encarnacion,* 281 U.S. 635, 640 (1930).
[4] The Second Employers' Liability Cases, 223 U.S. 1, 51 (1912).

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MOTION FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE

The Brotherhood of Railway Carmen of America, the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes, and the Switchmen's Union of North America respectfully move for leave to file a joint brief as *amici curiae* in this case. The consent of the attorneys for the petitioner has been obtained. The consent of the attorneys for the respondent was requested but refused.

The Brotherhood of Railway Carmen of America (hereinafter "the Carmen") consists of approximately 160,000 railroad industry employees. Collective bargaining agreements are presently in operation

between the Carmen and operating railroads throughout the nation. Members of this Brotherhood are engaged generally in the work of constructing, rebuilding, repairing and maintaining railroad equipment, including freight cars. The employees of Pacific Fruit Express engaged in this work—representing a substantial portion of respondent's work force—are members of this Brotherhood, and the Carmen have a collective bargaining agreement with P.F.E. properly filed with the National Mediation Board.

The Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes (hereinafter "the Clerks") has approximately 270,000 members nationally. This Brotherhood has collective bargaining agreements with operating railroads including Southern Pacific and Union Pacific Companies, as well as with Pacific Fruit Express. In the railroad industry, this union represents both clerical and yard working men; members of the Clerks include those employees who load ice on P.F.E. cars as well as those who load goods on box cars of other railroads and ice on passenger trains (commissary workers and caboose supply men). At Roseville, California, for example, where members of this Brotherhood are employed by Southern Pacific Company and by respondent, Clerks are engaged in the same jobs at Southern Pacific as at the adjacent P.F.E. yard.

The Switchmen's Union of North America represents approximately 4,000 yard workers who engage

in railroad switching operations, train make-up, and other train movements within yard limits. Although we do not represent any Pacific Fruit Express employees, Switchmen are employed to effect the yard movement of cars and trains at Southern Pacific, including those cars moved to and from the P.F.E. yard which abuts the Southern Pacific yard at Roseville, California. Switching operations on the P.F.E. yard are handled by its own employees who in that respect do exactly the same work as our men do for Southern Pacific.

Amici are seriously concerned about the outcome of this case. Traditionally the railroad Brotherhoods and unions have participated actively in the campaign for legal protection of the railroad workman from the hazards of his occupation.[1] Our interest in this case stems from the fact that our respective members are doing the same work, incurring the same risks and frequently suffering the same injuries and disabilities to the same extent—regardless of the corporate name of their employers. Yet if the rule of *Edwards v. Pacific Fruit Express* as announced by the Court of

[1]Recognition of the active role of railroad unions in the enactment of the Federal Employers' Liability Act, 45 U.S.C. §51, and the Federal Safety Appliance Act, 45 U.S.C. §1, was given by this Court in *Brotherhood of Railroad Trainmen v. Virginia*, 377 U.S. 1, 3 (1964). Counsel for the Brotherhoods have consistently involved themselves in litigation expanding the breadth of the federal remedies available to our members. See, *e.g.*, *Maurice v. California*, 43 Cal.App.2d 270, 110 P.2d 796 (1941), extending the F.E.L.A. to include the California belt line [terminal] railroad; *Ericksen v. Southern Pacific Co.*, 39 Cal.2d 374, 246 P.2d 642 (1952), cert. den. 344 U.S. 897, 73 S.Ct. 277, 97 L.Ed. 693, holding that a railroad lumber inspector injured while examining new ties on the loading dock of a lumber company came within the protection of the F.E.L.A.

Appeals be perpetuated, one segment of our Brotherhood memberships will continue to be denied the remedies established by Congress for the protection of railroad working men while the balance of our men in the railroad industry are adequately protected by the uniform application of the F.E.L.A.

Amici believe it appropriate that arguments be presented demonstrating the desirability of uniformity in the application of the F.E.L.A., the superiority of this protection as an industrial injury remedy, and the necessity for broad interpretation of the F.E.L.A. to effectuate its remedial and humanitarian purposes for all exposed equally to the same industrial hazards. An examination of the briefs filed in the Court of Appeals suggests that the arguments which *Amici* will offer will not be presented by the petitioner in this case.

Dated, San Francisco, California,
November 22, 1967.

Respectfully submitted,

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OPINION BELOW

The opinion of the Court of Appeals for the Ninth Circuit is reported at 378 F.2d 54.

workmen of Pacific Fruit Express who face the same hazards and provide the same services as their co-workers building and maintaining, moving, switching, loading[5] and cleaning railroad rolling stock for other employers. This Court determined over ten years ago that an employee of Southern Pacific Company engaged purely in new car construction was definitely within the purview of the F.E.L.A.[6] Yet those members of *Amici* employed by P.F.E. in the same work are denied the protection afforded by the Act. Such an arbitrary and narrow application of the F.E.L.A. is quite incompatible with what may be termed the *modern axiom* that the language of the Act be deemed all-inclusive unless a particular application has been specifically excluded.[7]

The effect of excluding the employees of P.F.E., engaged as they are in operations involved solely with the interstate transportation of goods by rail, is to deprive them of the remedy suited to this industry. This Court has previously taken note of the fact that Congress chose not to impose a workmen's compensation system for injured railroad workers.[8] The valid-

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[5]Loading and unloading accidents are included under traditional construction of the F.E.L.A. See Anno: Liability of railroad company under Federal Employers' Liability Act, for injury or death of employee resulting from its own activities in loading or unloading cars, 61 A.L.R.2d 811, 814; *cf. Atchison, T. & S. F. R. Co. v. Studer,* 213 F.2d 250 (9th Cir. 1954), finding liability for improper use and loading of a refrigerator car.

[6]*Southern Pacific Co. v. Gileo,* 351 U.S. 493 (1956).

[7]*Parden v. Terminal R. of Alabama Docks Dept.,* 377 U.S. 184, 189-190 (1964).

[8]*Rogers v. Missouri Pacific Railroad,* 352 U.S. 500, 509 (1957).

ity of this choice of remedies has ample support.[9] Workmen's compensation programs have been subject to criticism not only because the awards provided are wholly inadequate in many respects[10] but also because they tend to become out-dated and less efficient with the passage of time.[11] *Amici* do not suggest that this Court is to interfere with the application of workmen's compensation remedies in industries where no alternative remedy has been designated; it is, however, an injustice to the employees of P.F.E., engaged as they are in railroad work alone, to deprive them of the superior protection of the F.E.L.A. and subject them to a compensation scheme—specifi-

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[9]See discussion of Illinois Work Injuries Study reported in Conrad, *Workmen's Compensation: Is It More Efficient than Employer's Liability?*, 38 A.B.A.J. 1011 (1952). The study was an attempt to measure the expenses of administering the Illinois workmen's compensation system as compared with F.E.L.A. The results revealed that claimants' expenses under F.E.L.A. are less than one-half of claimants' expenses under the Illinois workmen's compensation system. Moreover, employers' claims expenses are also less than one-half under F.E.L.A. as compared to workmen's compensation, and the cost of F.E.L.A. to the taxpayers is stated to be less than one-eighth the cost of administering the state compensation system. Two of the most significant factors making F.E.L.A. a superior remedy are the economy of proceedings—a typical Illinois workmen's compensation claim going through three hearings before final decision, including those routinely settled—and the large number of F.E.L.A. cases that are adjusted without court proceedings.

[10]Griffith, *The Vindication of a National Public Policy Under the Federal Employers' Liability Act*, 18 LAW & CONTEMP. PROB. 160, 186 (1953); Richter, *Federal Employers' Liability Act*, 12 F.R.D. 13, 18 n. 26 (1951).

[11]Bancroft, *Workmen's Compensation Coverage and Other Remedies*, in CALIFORNIA WORKMEN'S COMPENSATION PRACTICE, California Continuing Education of the Bar, 28 (1963); Symposium on the Federal Employers' Liability Act, Foreword by Kramer, 18 LAW & CONTEMP. PROB. 100 (1953).

cally disapproved in the railroad industry—inappropriate to that industry.

The employees of respondent P.F.E. are presently within the protection of the Railway Labor Act,[12] the Railroad Retirement Act,[13] the Railroad Retirement Tax Act,[14] and the Railroad Unemployment Insurance Act.[15] P.F.E.'s rolling stock comes within the scope of the Federal Safety Appliance Act. It is incongruous to exclude from the F.E.L.A. employees receiving the protection of these other acts designed for the more complete protection of the railroad worker. This is especially the case since there is no logical reason to conclude that our members employed by P.F.E. are any less employed in the interstate common carriage of goods by railroad than our members employed by any railroad in the United States.

The decision in *Edwards v. Pacific Fruit Express* represents a step away from the broad remedial pattern of applying the F.E.L.A. This decision creates a vacuum in the Congressional regulation of the railroad industry and disrupts the even application of this humanitarian system for no valid reason. *Amici* believe that the question of whether employees of Pacific Fruit Express are included within the Employers' Liability Act is of great significance and is not limited in effect to the employees of P.F.E. We are keenly aware of the fact that the structure and

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[12] 45 U.S.C. §§151-188.
[13] 45 U.S.C. §228.
[14] Internal Revenue Code §3231.
[15] 45 U.S.C. §§351-367.

organization of the railroad industry can vary just as rapidly as the legal and commercial factors which bear upon that industry might change. Thus we are as vitally concerned with the direction taken in applying the F.E.L.A. as with its breadth. We most emphatically urge that the decision of the Court of Appeals be reversed.

Dated, San Francisco, California,
November 22, 1967.

Respectfully submitted,

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